

§ 440.11 Duration of coverage; modifications.

(a) Insurance coverage required under § 440.9, or other form of financial responsibility, shall attach upon commencement of licensed launch activities, and remain in full force and effect as follows:

(1) Until completion of licensed launch activities at the launch site; and

(2) For orbital launches, until the later of—

(i) Thirty days following payload separation, or attempted payload separation in the event of a payload separation anomaly; or

(ii) Thirty days from ignition of the launch vehicle.

(3) For suborbital launches, until the later of—

(i) Motor impact and payload recovery; or

(ii) The Office's determination that risk to third parties and Government property as a result of licensed launch activities is sufficiently small that financial responsibility is no longer necessary, as determined by the Office through the risk analysis conducted before the launch to determine MPL and specified in a license order.

(b) Financial responsibility required under this part may not be replaced, canceled, changed, withdrawn, or in any way modified to reduce the limits of liability or the extent of coverage, nor expire by its own terms, prior to the time specified in a license order, unless the Office is notified at least 30 days in advance and expressly approves the modification.

§ 440.13 Standard conditions of insurance coverage.

(a) Insurance obtained under § 440.9 shall comply with the following terms and conditions of coverage:

(1) Bankruptcy or insolvency of an insured, including any additional insured, shall not relieve the insurer of any of its obligations under any policy.

(2) Policy limits shall apply separately to each occurrence and, for each occurrence to the total of claims arising out of licensed launch activities in connection with any particular launch.

(3) Except as provided herein, each policy must pay claims from the first

dollar of loss, without regard to any deductible, to the limits of the policy. A licensee may obtain a policy containing a deductible amount if the amount of the deductible is placed in an escrow account or otherwise demonstrated to be unobligated, unencumbered funds of the licensee, available to compensate claims at any time claims may arise.

(4) Each policy shall not be invalidated by any action or inaction of the licensee or any additional insured, including nonpayment by the licensee of the policy premium, and must insure the licensee and each additional insured regardless of any breach or violation of any warranties, declarations, or conditions contained in the policies by the licensee or any additional insured (other than a breach or violation by the licensee or an additional insured, and then only as against that licensee or additional insured).

(5) Exclusions from coverage must be specified.

(6) Insurance shall be primary without right of contribution from any other insurance that is carried by the licensee or any additional insured.

(7) Each policy must expressly provide that all of its provisions, except the policy limits, operate in the same manner as if there were a separate policy with and covering the licensee and each additional insured.

(8) Each policy must be placed with an insurer of recognized reputation and responsibility that is licensed to do business in any State, territory, possession of the United States, or the District of Columbia.

(9) Except as to claims resulting from the willful misconduct of the United States or its agents, the insurer shall waive any and all rights of subrogation against each of the parties protected by required insurance.

(b) [Reserved]

§ 440.15 Demonstration of compliance.

(a) A licensee must submit evidence of financial responsibility and compliance with allocation of risk requirements under this part, as follows, unless a license order specifies otherwise due to the proximity of the licensee's intended date for commencement of licensed launch activities:

(1) The three-party reciprocal waiver of claims agreement required under § 440.17(c) of this part must be submitted at least 30 days before commencement of licensed launch activities involving the customer that will sign the agreement;

(2) Evidence of insurance must be submitted at least 30 days before commencement of licensed launch activities;

(3) Evidence of financial responsibility in a form other than insurance, as provided under § 440.9(f) of this part, must be submitted at least 60 days before commencement of licensed launch activities; and

(4) Evidence of renewal of insurance or other form of financial responsibility must be submitted at least 30 days in advance of its expiration date.

(b) Upon a complete demonstration of compliance with financial responsibility and allocation of risk requirements under this part, the requirements shall preempt any provisions in agreements between the licensee and an agency of the United States governing access to or use of United States launch property or launch services for licensed launch activities which address financial responsibility, allocation of risk and related matters covered by 49 U.S.C. 70112, 70113.

(c) A licensee must demonstrate compliance as follows:

(1) The licensee must provide proof of insurance required under § 440.9 by:

(i) Certifying to the Office that it has obtained insurance in compliance with the requirements of this part and any applicable license order;

(ii) Filing with the Office one or more certificates of insurance evidencing insurance coverage by one or more insurers under a currently effective and properly endorsed policy or policies of insurance, applicable to licensed launch activities, on terms and conditions and in amounts prescribed under this part, and specifying policy exclusions;

(iii) In the event of any policy exclusions or limitations of coverage that may be considered usual under § 440.19(c) of this part, or for purposes of implementing the Government's waiver of claims for property damage under 49 U.S.C. 70112(b)(2), certifying that in-

surance covering the excluded risks is not commercially available at reasonable cost; and

(iv) Submitting to the Office, for signature by the Department on behalf of the United States Government, the waiver of claims and assumption of responsibility agreement required by § 440.17(c) of this part, executed by the licensee and its customer.

(2) Certifications required under this section must be signed by a duly authorized officer of the licensee.

(d) Certificate(s) of insurance required under paragraph (c)(1)(ii) of this section must be signed by the insurer issuing the policy and accompanied by an opinion of the insurance broker that the insurance obtained by the licensee complies with the specific requirements for insurance set forth in this part and any applicable license order.

(e) The licensee must maintain, and make available for inspection by the Office upon request, all required policies of insurance and other documents necessary to demonstrate compliance with this part.

(f) In the event the licensee demonstrates financial responsibility using means other than insurance, as provided under § 440.9(f) of this part, the licensee must provide proof that it has met the requirements set forth in this part and in a license order issued by the Office.

§ 440.17 Reciprocal waiver of claims requirements.

(a) As a condition of each launch license, the licensee shall comply with reciprocal waiver of claims requirements as set forth in this section.

(b) The licensee shall implement reciprocal waivers of claims with its contractors and subcontractors, its customer(s) and the customer's contractors and subcontractors, under which each party waives and releases claims against the other parties to the waivers and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from licensed launch activities, regardless of fault.